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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VEPKHVIA MAGHRADZE;
NELI MAGRADZE,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 04-73303
04-73304

Agency Nos. A75-675-898
A75-675-897

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY and BERZON, Circuit Judges.

In these consolidated petitions for review, Vepkhvia Maghradze (04-73303) and his former wife Neli Magradze (04-73303), natives and citizens of Georgia, petition for review of the Board of Immigration Appeals' ("BIA") order denying

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

their motions to reopen removal proceedings to apply for adjustment of status. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion. *de Martinez v. Ashcroft*, 374 F.3d 759, 761 (9th Cir. 2004). We deny in part and dismiss in part the petitions for review.

The BIA did not abuse its discretion in denying Petitioners' motions to reopen as untimely because they did not file the motions within ninety days of the BIA's final order of removal. *See* 8 C.F.R. § 1003.2(c)(2); *Ekimian v. INS*, 303 F.3d 1153, 1156 (9th Cir. 2002) (noting that a motion to reopen to apply for adjustment of status must be filed no later than ninety days after the issuance of a final decision by the BIA).

We are unpersuaded by Petitioners' contention that their motions to reopen were timely because the BIA's denial of their motions to remand did not constitute final removal orders. *See Stone v. INS*, 514 U.S. 386, 405 (1995).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen. *See Ekimian*, 303 F.3d at 1159.

The clerk shall change the docket to reflect the caption as set forth above.

PETITION FOR REVIEW in No. 04-73303 DENIED in part;

DISMISSED in part.

PETITION FOR REVIEW in No. 04-73304 DENIED in part;

DISMISSED in part.